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CHARLES ELMORE CROPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

No. 1

MILK WAGON DRIVERS UNION OF CHICAGO,
LOCAL 753, A VOLUNTARY UNINCORPORATED ASSOCIATION,
ET AL.,

Petitioners,

vs.

MEADOWMOOR DAIRIES, INC., A CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

**MOTION FOR LEAVE TO FILE PETITION FOR
REHEARING INSTANTER.**

JOSEPH A. PADWAY,
ABRAHAM W. BRUSSELL,
Attorneys for Petitioners.

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Now come Milk Wagon Drivers' Union of Chicago, Local 753, a voluntary unincorporated association, *et al*, petitioners in this Court, by their attorneys, and respectfully pray that the Court grant them leave to file their petition for rehearing instanter.

In support of said motion petitioners present the affidavit of Abraham W. Brussell.

JOSEPH A. PADWAY,
ABRAHAM W. BRUSSELL,
Attorneys for Petitioners.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

ABRAHAM W. BRUSSELL, being duly sworn, makes his oath and says that he is one of the attorneys of record for the petitioners in this Court. That he has been the sole attorney entrusted by the petitioners with the duty of preparing and filing the various briefs in this Court on behalf of the petitioners. On February 10, 1941, this Court rendered its judgment and filed its opinion in the above entitled cause affirming the judgment and decision of the Supreme Court of Illinois. Under the rules of this Court the petition for rehearing was due on or by March 7, 1941. After receipt of the opinion of this Court your affiant studied the same and decided to prepare a petition for rehearing. Your affiant from February 13, 1941 up until March 6, 1941, was engaged in the study and analysis of the opinion and the preparation of a petition for rehearing. Your affiant dictated and prepared three separate drafts of a petition for rehearing and discarded the same because they were unsatisfactory. Your affiant prepared and dictated a fourth draft and sent the same to the law printers, namely, the Gunthorp-Warren Printing Company of Chicago, Illinois.

That your affiant received his first galley proof from the printers on Wednesday, March 5, 1941. Your affiant made considerable changes and revision and numerous eliminations cutting down the size of the petition for rehearing.

That your affiant was engaged in court in the trial of a cause entitled Chain O Mines vs. United Gilpur Corporation, in the Federal District Court at Chicago, Illinois, on Tuesday and Wednesday, March 4 and 5, 1941, and, consequently, your affiant was required to correct the printer's proof after court hours.

Your affiant inquired of the printers of the schedule for shipping said petition for rehearing and was assured that

if a petition for rehearing were sent air express on March 6, 1941, that it would reach Washington, D. C., on the early morning of March 7, 1941, and would be filed without fail in the office of the Clerk of this Court on Friday, March 7, 1941.

That your affiant has used this printer many times and has never had a brief filed late.

Your affiant previous to March 4, 1941, had informed the attorney for the respondent, Mr. Donald Schaffer, that he was working on and preparing a petition for rehearing and that the same would be filed in this Court on Friday, March 7, 1941.

That on March 6, 1941, four copies of the petition for rehearing were mailed to attorneys for respondent. These copies were received by attorneys for respondent on the morning of Friday, March 7, 1941. Your affiant spoke to the said Donald Schaeffer concerning the same on that morning.

Your affiant further states that during the time the certiorari proceedings were pending in this Court the injunction directed by the Supreme Court of Illinois was in full force and effect, and that there was no stay of said injunction sought for or obtained by the petitioners in this Court. Prior to the allowance of certiorari on June 3, 1940, the petitioners had paid to the respondents all the costs incurred prior thereto.

Your affiant further states that in checking the schedules of the air express he was advised by the printer that the printed petitions were delivered to the air express company on Thursday, March 6, 1941. That the express company had forwarded the petition for rehearing on an airplane on the morning of Friday, March 7, 1941. That the exact plane that carried the petitions was in question but it was no later than on a plane that arrived at Washington, D. C., at 9:30, Friday, March 7, 1941. According to the routine

and schedule adopted by the air express company said printed petition for rehearing should have been delivered in the office of this Court no later than noon, Friday, March 7, 1941. The air express company up to the present time has not been able to give the printer any reason for the delay in delivery to this Court.

Your affiant states that on Thursday, March 13, 1941, at the hour of 9:00 A. M. he received a letter from the Clerk of this Court dated March 11, 1941, informing him that the petitions had not been delivered to the Clerk's office until Saturday, March 8, 1941. This was the first time your affiant had notice that the petitions had not been filed in this Court within the time required by rules of this Court.

Your affiant immediately spoke to Mr. Donald Schaeffer, attorney for respondents, and after the facts stated herein had been explained to him, Mr. Schaeffer stated that the delay was due to some error by the printer and the air express company. Mr. Schaeffer also stated that he did not have any objections to the making of this motion or the granting of this motion by the Court.

That your affiant has attempted to find out the reason for the delay in the delivery to this Court of said petition for rehearing but up to this time has been unable so to do.

WHEREFORE, your affiant prays that this Court grant leave to petitioners to file their petition for rehearing instant.

ABRAHAM W. BRUSSELL.

SUBSCRIBED AND SWORN TO before me this 13th day of March, 1941.

(NOTARIAL SEAL)

ADOLPH J. KOLTERMAN,
Notary Public.

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